

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 382 of 1986

in

SPECIAL CIVIL APPLICATION No 572 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

K S SUGATAN

Versus

HEIRS OF SINDHI KASAM MOTI

Appearance:

Mr.K.C.Shah, learned Asst.G.P.for Appellant
MR DD VYAS for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

Date of decision: 06/07/98

ORAL JUDGEMENT (Per M.R.Callla,J)

1. This Letters Patent Appeal is directed against the judgment and order dated 5.7.84 passed in Special Civil Application No.572 of 1978 whereby the Special Civil Application is allowed and awarded compensatory cost holding the present appellant personally liable for a sum of Rs.2500/- to be paid to the original petitioners within six weeks of the receipt of the writ.

2. We have heard learned counsel and have also gone through the impugned order.

3. There is no dispute that this Court in its decision dated 9.9.77 rendered in Special Civil Application No.45 of 1974 had held that the order declaring original petitioner's property as evacuees property was in contravention of the provisions of S.7A of the Administration of Evacuees Property Act as there was no evidence on record as to when Kasam Moti i.e. father of the original petitioner had migrated to Pakistan or had become an evacuee. In spite of the High Court's judgment dated 9.9.77, as above, which was enclosed as Annexure 'C' with the Special Civil Application, the Deputy Custodian of Evacuee Properties and Collector-cum-Settlement Commissioner, Junagadh issued the order dated 23.1.78 declaring the property bearing S.No.10/1 admeasuring 12 Acres and 29 Gunthas as evacuee property. Against this order dated 23.1.78 the Special Civil Application was filed by Sindhi Kasam Moti and this Letters Patent Appeal is being pursued by his legal heirs. The learned single Judge has recorded in the impugned order dated 5.7.84 that the Government and its functionaries had not cared to file any reply either in the earlier Special Civil Application No.45 of 1974 or in the Special Civil Application No.572 of 1978 out of which this Letters Patent Appeal has arose. The learned single Judge has held that there was no material to show that the father of the present petitioners was an evacuee at any time and that it had been so held in the earlier Special Civil Application and the same has been held in the present impugned order dated 5.7.84.

4. We do not find any basis to hold that the father of the present petitioner was an evacuee and the learned Asst.G.P. has not been able to assail this finding of the learned single Judge. In the facts and circumstances of this case, we find that the order dt.23.1.78, which was impugned in the present Special Civil Application, was wholly uncalled for, rather was in disregard of this court's decision dated 9.9.77 rendered in Special Civil Application No.45 of 1974. It was rather contemptuous. In this background, the learned single Judge has rightly

imposed compensatory cost of Rs.2500/- against the present appellant and he has also been rightly held to be personally liable for payment of the same. We do not find any substance in any of the grounds raised in the Memo of Appeal.

5. Accordingly we do not find any substance in this Letters Patent Appeal and the same is hereby dismissed with no order as to costs.